

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated:- 05.04.2006

Coram:-

The Hon'ble Mr. Justice P.SATHASIVAM
and
The Hon'ble Mr. Justice J.A.K.SAMPATHKUMAR

Writ Appeal No.2001 of 2001

Justice Basheer Ahmed
Sayeed Women's College,
rep. by its Correspondent,
No.309, Anna Salai,
Teynampet,
Chennai-600 018. Appellant/2nd respondent

Vs.

1.Zahida Jabeen, ... 1st Respondent/Petitioner
2.The Regional Joint Director of
Collegiate Education,
Madras Region,
Anna Salai,
Chennai-600 002. 2nd Respondent/1st respondent

Writ appeal filed under Clause 15 of the Letters patent against the order dated 06.08.2001 made in W.P.No.9479 of 1995. Petition filed under Article 226 of the Constitution of India, praying that the Hon'ble Court will be pleased to issue a writ of Certiorarified Mandamus calling for the records from the file of the Second Respondent relating to the Impugned order in Ref. 1267/95 quash the order dated 10.07.1995 and consequently direct the second respondent to restore the petitioner into service with all attendant benefits and with a further direction to pay the Salary of the Petitioner with effect from 1.11.1993, till 10.07.1995 with exemplary Award. Costs

For Appellant : Mr.V.Narayanasamy

For 1st Respondent : Mr.L.Chandrakumar

For 2nd respondent : Mr.R.Vijayakumar
Government Advocate

JUDGMENT

(Judgment of the Court was delivered by P.SATHASIVAM, J.)

The above writ appeal is filed against the order of the learned single Judge dated 06.08.2001 made in W.P.No.9479 of 1995, in and by which, the learned single Judge has directed the Government, Education Department to give necessary sanction for filling up of the vacancies as mentioned by the management and also to approve the appointment of the writ petitioner in regular capacity as against any one of the three vacancies within a period of four weeks from the date of receipt of a copy of the said order.

2. Justice Basheer Ahmed Sayeed Women's College, Chennai-600 018 is the appellant in the above appeal. The first respondent herein is the writ petitioner in W.P.No.9479 of 1995.

3. For convenience, we shall refer the parties as arrayed before the learned single judge.

4. According to the writ petitioner, she studied B.Sc., (Nutrition) at Queen Mary's College, Madras and also studied M.Sc., in Child Development in Family Relationships in the Justice Basheer Ahmed Sayeed Women's College in 1989. She passed M.Sc. in First Class and also obtained third rank in the University. In 1990, she completed M.Phil in the same subject and secured first class. She worked as a Research Assistant in the second respondent college for 1 1/2 years. While so, based on the request made by the second respondent College, the petitioner has attended the interview for the post of Lecturer. She was given appointment order dated 23.2.1993 appointing her as Lecturer, Home Science in the second respondent College. Even though it is stated that she will be working against the leave vacancy of one Asiya Begum, who was granted one year leave on loss of pay with effect from 14.11.1993, according to her, no period was specified in her appointment. Since Asiya Begum did not return after expiry of her leave on 14.11.1994, the second respondent College issued another order dated 13.11.1993 extending her appointment for one more year. The second respondent has also sent a proposal for her continuance and regularisation to the first respondent, the Regional Joint Director of Collegiate Education, Madras Region, Madras-2. During the said period she was not paid salary. She had

worked without salary for 19 months. Though full work was extracted from her, she sent a protest letter dated 4.07.1995 to the first respondent through the office of the second respondent. When she went to work on 5.7.1995, she found some marking in the attendance register. She sent a protest letter on 7.7.1995 to the second respondent. In the meanwhile, the second respondent sent a telegraphic order dated 10.7.1995 terminating her services and a letter was also sent to her by registered post on the same date. In such circumstances, the petitioner has filed the writ petition seeking to quash the order dated 10.7.1995 and also prayed for direction to the second respondent to restore her services with all attendant benefits and also for further direction to pay salary with effect from 1.11.1993 to 10.7.1995.

5. The second respondent filed a counter affidavit stating that the petitioner was appointed only on the leave vacancy subject to the approval of the respondents. The second respondent has every right to terminate the services of any employee of the first respondent, whose appointment was purely made on temporary basis. The petitioner cannot question the same. The first respondent has not approved the appointment of the petitioner. Hence the petitioner was terminated from her service. The petitioner was not appointed as per the Tamil Nadu Private Colleges (Regulation) Act, 1976 and the Rules framed thereunder.

6. The first respondent - Regional Joint Director of Collegiate Education, Chennai, has also filed a counter affidavit highlighting their stand.

7. By the impugned order dated 6.8.2001, the learned single Judge, after finding that there was no justification on the part of the management/College as well as the Educational Authority, issued a direction to the first respondent-Educational Authority for necessary sanction for filling up of the vacancies as mentioned by the Management-second respondent and also directed for the approval of the appointment of the petitioner in regular capacity as against any one of the three vacancies. In the same order, the learned single Judge has also directed the respondents to pay the salary with all attendant benefits to the petitioner for a period of 19 months during which she had rendered her full services to the respondents. Questioning the said order, the management has filed the present appeal.

8. Heard Mr.V.Narayanasamy, learned counsel for the appellant , Mr.L.Chandrakumar, learned counsel for the first respondent and Mr.R.Vijayakumar, learned Government Advocate for the second respondent.

9. After taking us through the order of the learned single Judge and other connected proceedings, the learned counsel for the appellant initially submitted that the writ petition against the appellant institution is not maintainable. In any event, according to him, the writ petitioner has no right to insist that she should be appointed in a regular vacancy. In other words, according to the counsel, it is for the college/management to decide and the direction issued by the learned single Judge cannot be sustained.

10. On the other hand, the learned counsel appearing for the writ petitioner/contesting first respondent would submit that in view of the law declared by the Supreme Court in AIR 1993 Supreme Court 2178 (Unni Krishnan J.P. and others Vs. State of Andhra Pradesh and others) and the Division Bench decision of this Court reported in 1999 Writ law Reporter page 23 (A.P.John Paulraj Vs Central Board of Secondary Education, rep. by its Chairman, New Delhi and others), the writ petition filed by the petitioner is maintainable.

11. Regarding merits, the learned counsel appearing for the writ petitioner/contesting first respondent, has contended that even though the initial appointment is for the temporary period, she was considered and selected only after following the procedure as provided under the Act and Rules. He has also contended that the management having sought an approval of the appointment of the writ petitioner with the first respondent Educational Authority, it is not permissible for the appellant to raise objections before this Court at this point of time. Accordingly, the learned counsel for the writ petitioner/first respondent herein prayed for dismissal of the writ appeal.

12. Coming to the maintainability, it is not in dispute that as per the decision of the Supreme Court reported in AIR 1993 Supreme Court 2178 (Unni Krishnan J.P. and others Vs. State of Andhra Pradesh and others), writ petition against a minority institution is maintainable and the conclusion at paragraph 152(e) is as follows.

"152(e) Even if the Government or the University does not expressly impose such a condition, such condition is implicit by virtue of the fact that in

such a situation, the activity of the private educational institution is liable to be termed as "State action". The fact that these institutions perform an important public function coupled with the fact that their activity is closely intertwined with Governmental activity, characterises their action as 'State action'. At the minimum, the requirement would be to act fairly in the matter of admission of students and probably in the matter of recruitment and treatment of its employees as well. These institutions are further bound not to charge any fee or amount over and above what is charged in similar Governmental institutions. If they need finances, they must find them through donations or with the help of religious or charitable organisations. They cannot also say that they will first collect capitation fees and with that money, they will establish an institution. At the worst, only the bare running charges can be charged from the students. The capital cost cannot be charged from them."

13. It is also useful to refer the Division Bench decision of this Court reported in 1999 Writ Law Reporter page 23 (A.P. John Paulraj Vs. Central Board of Secondary Education, rep. by its Chairman, New Delhi and others) wherein Their Lordships, after considering various decisions of the Supreme Court as well as this Court, rejected similar contention and concluded that the writ petition is maintainable in law. In view of the above decisions, we hold that the writ petition filed by the petitioner against the second respondent College is maintainable and reject the contra argument made by the learned counsel appearing for the College.

14. Coming to the merits of the order, it is seen that though the writ petitioner was appointed in the leave vacancy of one Asiya Begum, it is the specific case of the petitioner that the management, after following the procedure as provided under the Act and Rules, among 21 persons called upon from the employment exchange, she was selected and appointed. It is not the case of the College that she does not possess the required qualification for holding the post. As a matter of fact, the College themselves requested the first respondent to approve her appointment in any one of the three vacancies created thereafter. It is not in dispute that at the relevant point of time, vacancy was available in the College and that was the reason the College requested the first respondent to approve her appointment for continuance. In

this background, let us consider whether the learned single Judge is justified in issuing direction.

15. As stated earlier, the writ petitioner was appointed in the leave vacancy of Asiya Begum. Even according to the College, Asiya Begum left the country and she has not made any intimation either to the Government or to the employer viz., Justice Basheer Ahmed Sayeed Women's College. She continued to remain absent and ultimately disciplinary proceedings were initiated against her and finally she was terminated from service with effect from 12.07.1995. On the other hand, the services of the petitioner were terminated only on 10.7.1995. As rightly observed by the learned single Judge, there was no difficulty in having the continued services of the petitioner in the vacancy created by terminating the services of Asiya Begum, subsequent to 12.07.1995. It is further seen that the petitioner worked for nearly 19 months without salary. It is also seen that at the relevant date, two vacancies have been allotted to the Department of Home Science by the Directorate of Collegiate Education, Chennai. Those two vacancies have arisen due to retirement of two members of the staff from Textiles and Clothing Sections. The learned single Judge, after verifying the stand taken by the College as well as the Educational Authority, has concluded that both the respondents were responsible for the delay in considering the claim of the writ petitioner, which necessitated him to issue direction as claimed.

16. Though learned counsel for the appellant has contended that only on the ground of sympathy, the learned single Judge has issued a direction, as stated earlier, even at the time of initial selection, viz., in the leave vacancy of Asiya Begum, procedures were followed and after satisfaction, the writ petitioner was selected among 21 candidates sponsored by the employment exchange. We have also already referred to the vacancies available as well as the sanctioning of two additional posts by the Directorate of Collegiate Education, Chennai. In such circumstances, as rightly pointed out by the learned single Judge, the appointment of the petitioner ought to have been continued in the available vacancy. The particulars furnished would show that before considering the claim of the writ petitioner, the procedures as provided under the Act and Rules were fully followed and she alone was successful at the hands of the management. In such circumstances, we do not find any error or infirmity in the order passed by the learned single Judge. On the other hand, we are in agreement with the said conclusion.

17. In the light of what is stated above, the writ appeal fails and the same is dismissed. No cost.

18. In view of the dismissal of the writ appeal filed by the College, a direction is issued to the Justice Basheer Ahmed Sayeed Women's College, Chennai to forward the name of the writ petitioner with necessary particulars to the second respondent herein, viz., the Regional Joint Director of Collegiate Education, Madras Region, Anna Salai, Chennai-600 002 within a period of four weeks from the date of receipt of a copy of this order. It is further made clear that on receipt of necessary proposal, the second respondent is directed to approve the same within a period of four weeks from the date of receipt of the approval from the College.
raa

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

To

The Regional Joint Director of
Collegiate Education,
Madras Region,
Anna Salai,
Chennai-600 002.

+ 2 cc to Mr. V. Narayanaswami, Advocate sr no. 16994
+ one cc to Mr. L. Chandrakumar, Advocate sr no. 17042
+ one cc to the government Advocate sr no. 17103

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